

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
OXFORD DIVISION**

**CAROLINE ELIZABETH MOORE AS
ADMINISTRATRIX OF THE ESTATE
OF DEREK MITCHELL SMITH AND AS
PARENT AND GUARDIAN OF D. A. M.,
A MINOR, AND ON BEHALF OF THE
WRONGFUL DEATH BENEFICIARIES
OF DEREK MITCHELL SMITH**

PLAINTIFF

VS.

CIVIL ACTION NO. 3:18-cv-025-NBB-RP

**TUNICA COUNTY, MISSISSIPPI;
JAYLIN JAMES, ROBERT MELVIN**

DEFENDANTS

ANSWER TO AMENDED COMPLAINT

COME NOW Tunica County, Mississippi, Jaylin James and Robert Melvin, Defendants in the above-styled and numbered cause, and file their Answer to the Complaint and would state and allege as follows:

FIRST DEFENSE

The Amended Complaint fails to state a claim upon which relief may be granted.

SECOND DEFENSE

Individual defendants are qualifiedly immune from liability as to all claims asserted against them in their individual capacities.

THIRD DEFENSE

All state law claims are barred by the applicable statute of limitations, the doctrine of sovereign immunity, the exclusivity provisions and affirmative defenses set forth in the Mississippi Tort Claims Act (Miss. Code Ann. §§ 11-46-3 thru 9) and the pre-suit notice requirements of Section 11-46-11 which the plaintiff failed to satisfy before filing suit.

FOURTH DEFENSE

In accordance with Miss. Code Ann. §§ 11-46-7 & 9 and Mississippi common law, the individual Defendants are immune from liability as to all claims brought pursuant to state law.

FIFTH DEFENSE

The defendants are immune from punitive damages liability.

SIXTH DEFENSE

The defendants affirmatively plead the defense as delineated under Ellerth/Farager.

SEVENTH DEFENSE

And now, answering the allegations of the Amended Complaint, paragraph by paragraph, the defendants respond and allege as follows:

1.

The allegations contained in paragraph 1 of the Amended Complaint are denied as the Defendants are without sufficient knowledge to admit or deny said allegations.

2.

The allegations contained in paragraph 2 of the Amended Complaint are admitted.

3.

The allegations contained in paragraph 3 of the Amended Complaint are denied, except that the defendants admit that Derek Mitchell Smith was arrested on February 9, 2017.

4.

The allegations contained in paragraph 4 of the Amended Complaint are denied except that the defendants admit that Derek Mitchell Smith was booked and detained at the Tunica County Jail on February 9, 2017 and was released at approximately 5:30 pm on February 10, 2017 into the care and treatment of EMTs and for transport to BMH-DeSoto Hospital.

5.

The allegations contained in paragraph 5 of the Amended Complaint are denied.

6.

The allegations contained in paragraph 6 of the Amended Complaint are denied.

7.

The allegations contained in paragraph 7 of the Amended Complaint are denied.

8.

The allegations contained in paragraph 8 of the Amended Complaint are denied.

9.

In response to the allegations incorporated by reference in paragraph 9 of the Amended Complaint, the defendants incorporate their respective responses set forth above.

10.

The allegations contained in paragraph 10 of the Amended Complaint are denied.

11.

The allegations contained in paragraph 11 of the Amended Complaint are denied.

12.

The allegations contained in paragraph 12 of the Amended Complaint are denied, except that the defendants admit that the individual defendants were acting within the course and scope of their employment for all times relevant to the matters raised in the Amended Complaint.

13.

The allegations contained in paragraph 13 of the Amended Complaint are denied.

14.

In response to the allegations incorporated by reference contained in paragraph 14 of the Amended Complaint, the defendants incorporate their respective responses set forth above.

15.

The allegations contained in paragraph 15 of the Amended Complaint are denied.

16.

The allegations contained in paragraph 16 of the Amended Complaint are denied.

17.

The allegations contained in paragraph 17 of the Amended Complaint are denied.

18.

The allegations contained in paragraph 18 of the Amended Complaint are denied.

19.

The allegations contained in paragraph 19 of the Amended Complaint are denied.

20.

The allegations contained in paragraph 20 of the Amended Complaint are denied.

21.

The allegations contained in paragraph 21 of the Amended Complaint are denied.

22.

The allegations contained in the “prayer for relief” (Count IV) are denied. The defendants deny each and every allegation of liability set forth in the Complaint and specifically deny that the plaintiffs are entitled to the relief requested. The defendants further deny that the plaintiff is entitled to a jury trial for the state law claims. The defendants request that this court dismiss this case at cost to the plaintiff and award defendants their costs and attorney’s fees incurred in the defense of this frivolous matter. Answering defendants request any other relief which the court may find warranted in the premises.

THIS, the 7th day of August, 2018.

Respectfully submitted,

TUNICA COUNTY, MISSISSIPPI ET AL.

BY: /s/David D. O'Donnell

DAVID D. O'DONNELL, MSB# 3912

dodonnell@claytonodonnell.com

Attorney for Defendants

Of Counsel:

CLAYTON O'DONNELL, PLLC
1403 Van Buren Avenue, Suite 103
P.O. Drawer 676
Oxford, MS 38655
Telephone: (662) 234-0900
Facsimile: (662) 234-3557

CERTIFICATE OF SERVICE

I, David D. O'Donnell, hereby certify that I electronically filed the foregoing with the Clerk of the Court using the ECF system which sent notification of such filing to all counsel of record.

This the 8th day of August, 2018.

s/ David D. O'Donnell

DAVID D. O'DONNELL, MSB# 3912

dodonnell@claytonodonnell.com